REAR ADMIRAL GOLDSBOROUGH

AND THE

RETIRING LAWS OF THE NAVY.

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Paper read by Commodore THORNTON A. JENKINS, *U. S. Navy, before the Naval Committee of the House of Representatives January* 21, 1868, *in reply to Rear Admiral Goldsborough's claim to be continued on the active list of the Navy.*

On last Tuesday morning, when I and a few other officers of the Navy were present before this committee, at the invitation of its honorable chairman, to hear what Rear Admiral Goldsborough might have to say in opposition to a bill now before it, and make such answer as might be deemed proper and pertinent to the occasion, we heard a very long and labored argument from the learned counsel of the Rear Admiral. What effect the statements, arguments, construction of the laws, and alleged facts of the counsel, on that occasion, had upon the honorable chairman and members of the committee, is of course beyond my power to divine; but I may be permitted to say at the outset, that it is fairly to be inferred that a stronger and better fortified case would probably have called forth from the counsel a written argument for the consideration of the committee, in place of the mere declamatory special pleadings and personal *dicta* with which it was regaled. It would be very difficult even for an expert to follow the counsel through all his meanderings, sophistries, and assumed facts; but if it were practicable to do so, it would not be profitable to the committee, inasmuch as it has the entire correspondence from the Navy Department, in an official shape, now before it; and the laws upon which the Department has acted in this case were drawn, discussed, and passed while some of the present members of the Naval Committee were then members; and it cannot be assumed or asserted with any grace or courtesy that those members did not know the true intent and meaning of their own enactments. The counsel in this case undertook to give a history of it; but it seemed to us on this side that he failed to produce a picture that could be

recognized by those who are familiar with the law and the facts. He certainly failed to bring to the attention of the honorable committee some of the prominent points upon which the entire superstructure rests, and with them in the foreground, there is nothing upon which his client can base his claim for retention on the active list of the Navy after having been fifty-five years in the service.

Was or was not Rear Admiral Goldsborough subject to be retired, under existing laws, on the 18th June, 1867?

If he was not, why did he, on the 3d day of July, 1866, a few days less than a year of the legal period for his retirement, address a letter to the Secretary of the Navy in anticipation of action that would not have been had for nearly a year?

The question of his retirement had not been thought of by the Department until the receipt of that letter of July 3, 1866. In that letter he says, in the first paragraph: "I must respectfully invite your determination upon the claim it sets forth." It will be observed the word "claim" is used; not his right under the laws; but the word "claim," as used by him, and taken in connection with other portions of this communication, simply means *favor;* that is, that the laws for the better government of the Navy, and the invariable usage of the Department, were to be ignored and set aside nearly a year in advance of the time for action in his case as a *favor* to HIM, and to the serious injury of his own brother officers of every grade, but especially to those who, by his retention, are deprived both of the rank and pay to which they are by law *now* entitled.

Rear Admiral Goldsborough makes nine separate and distinct points in his letter of July 3, 1866.

First, that he was born February 18, 1805.

Second, that, although his warrant as a midshipman bears date 18th June, 1812, yet in fact it was not given to him, issued, or even executed, until perhaps a year or two (or more, it may have been) afterwards, and that it was antedated, as he understood, at the instance of the then Secretary of the Navy (Mr. Paul Hamilton) himself, with whom he happened to be a favorite as a child, &c., &c.

But what are the facts? His warrant, as it appears from the records of the Department, bears date June 18, 1812, and the letter accompanying its transmission bears date, as shown by the Department records, December 11, 1812; and, so far from its not having been given, issued, or executed until perhaps a year or two (or more, it may have been) afterwards, the Department records show that Mr. Secretary Hamilton signed his last official communication at the Department on the 31st day of December, 1812, less than one month after the date of the letter transmitting his warrant. When a person sets up a claim, relying upon facts and dates to sustain it, and is not very choice of his use of epithets and expletives against those who oppose or differ from him, as may be seen in "the notes in relation to the case of Rear Admiral Goldsborough," he should be a little more careful than the Admiral has shown himself to have been in this instance. Even if it be true that this midshipman's appointment was a mere act of personal favoritism or friendship on the part of Mr. Secretary Hamilton, antedated a few months, and not years, as asserted by the Admiral, does it furnish any reason, in law or logic, for his retention on the active list of the Navy beyond the age and service of his peers?

If he really was the pet of the then Secretary, is it to follow, as a natural consequence, that he shall be, to the end of his days, a pet of the country, in violation of law and usage, and to the injury of the country, and of those who have rendered as good, if not more meritorious, service than he? It has been shown that Rear Admiral Goldsborough's warrant as a midshipman in the Navy bears date June 18, 1812, the date of the declaration of war against Great Britain, and that he was informed of it on the 11th December following. The war continued until February, 1815, but Midshipman Goldsborough remained on shore during that period of time.

Admiral Farragut, who was born on the 5th July, 1801, was appointed a midshipman in December, 1810, served in the Essex frigate from August 12, 1811, and, "mere child" as he was, distinguished himself while under the command of Commodore

David Porter, while Goldsborough only heard the enemy's guns when he burnt the Capitol of his country.

The third point taken by Rear Admiral Goldsborough is, that the letter accompanying his appointment distinctly states that he was not to receive any pay or emolument whatever until he was ordered into actual service.

The reply to this is, that all midshipmen, and other naval appointments, were then, and are now, subjected to this precise restriction.

The fact that Midshipman Goldsborough's warrant was of the same tenor as the warrants of others, then and since appointed, would seem to prove that although he was "a favorite as a child" with the Secretary of the Navy, that even he could not be made so gross an exception to the rules and usage of the Department and service as to give him pay anterior to his rendering any service. Other midshipmen, "mere children," have been from time to time appointed, and in no instance, is it believed, has a midshipman, of any age, been allowed pay upon his appointment or warrant before the date of first reporting for duty. Pay has been asked in at least one instance before the present claimant, and the Department, in declining to allow it, informed the applicant that the increased rank conferred and secured by the date of the warrant was considered ample remuneration or equivalent.

In the fifth position the Rear Admiral states *what he conceives* to be his *status*, and contends that in *reality* his career did begin or *actually* first took date in June or July, 1816, when he first reported for duty. In reply to this pretension, it is only necessary to refer to the action of the Department in the cases of the numerous officers who have been retired under existing laws. Every officer coming within the purview of existing laws has been retired in conformity to those laws, and as they were construed in the case of Rear Admiral Goldsborough at the time when he should have been retired, and which he, nearly a year in advance, attempted to have set aside for his own sole benefit.

Many of us may, and no doubt do, conceive or flatter ourselves that we possess much greater merit than others are willing to

concede to us; but it is quite new doctrine that the Department is to construe law according to the conceptions of a single deeply-interested individual.

The sixth point set forth in the Rear Admiral's "claim" is very remarkable; showing an obliviousness in regard to the benefits his date of appointment gave him, and as to the effort he made within a few years past to obtain from the auditing officers of the Treasury pay for the time he now contends he was only *nominally* in the service. He speaks of *nominally* holding a warrant, and *really* being in the service.

I will leave to philologists the task of determining how a person can nominally hold a thing actually in his possession, or in the possession of his next friend, in the eye of the law. But let us see the precise language. He says, "I may remark, that no advantage or benefit whatever, either of rank or pay, or of any other sort or kind, of which I am conscious, ever accrued to me from the Government, owing to the fact that I did *nominally* hold a warrant as a midshipman for some four years before I did *really* enter the service." This was evidently written after mature deliberation, and with the care demanded by the great stake. There is one saving clause in this carefully-worded sentence, and that is the word *conscious*. In all charity, we might have given the Rear Admiral credit for obliviousness or a bad memory in regard to occurrences at such an early period of his life, although they occurred after he passed from a "mere child" to another stage in life, had he not apparently taken special pains during the time he was in command of the European squadron, and probably while the 3d-of-July letter was incubating, to impress upon some of his brother officers the fact that he had been made an acting lieutenant by the then Commodore Stewart over midshipman Henry Adams.

Rear-Admiral Stewart says in his letter:

"BORDENTOWN, NEW JERSEY,
"*November* 17, 1867.

"C. D. DRAKE, Esq.,
"17 *Woodland Terrace, Philadelphia.*

"SIR: In reply to your letter of the 15th inst., I have to state

that, on reference to my order-book, I find that I appointed Lewis M. Goldsborough an acting lieutenant on board the Franklin on the 1st January, 1823, and that on the 27th of May, of the same year, I appointed Henry A. Adams an acting master on board the Dolphin.

"The acting lieutenancy was conferred upon Mr. Goldsborough in consequence of the seniority of his warrant, which introduced him into the Navy at the commencement of the war with England, while the warrant of Mr. Adams was nearly two years later date.

"Very respectfully, yours,

(Signed) "CHARLES STEWART."

I beg to invite the special attention of the committee to the plain facts contained in this concisely-written letter of Admiral Stewart.

It is possible that Rear Admiral Goldsborough may have felt then, and may feel now, that he was indebted to the illustrious Stewart for his acting appointment over Adams, who had seen much more service than he at sea, on the score of greater capacity to perform the duties, or possessing more professional and personal merit than Adams; but the officers of the Navy—the messmates and companions of those two officers—would hesitate long before they would concede any superiority, in any way, to Rear Admiral Goldsborough over Commodore Adams, up to the moment he was stricken down by disease while in the performance of duty. But the facts are patent against the Rear Admiral's consciousness in this case. The Secretary of the Navy, under date of December 11, 1867, reports, in reply to a resolution of the House of Representatives, the facts as they were found in the records of the Department, to which I beg the attention of the committee, and especially *to this very significant fact, that these new lights were not remembered, and, consequently, were not before the President and Cabinet on the 17th of June last, when this case was brought before them at the instance of Rear Admiral Goldsborough's family or friends.*

In this sixth position, Rear Admiral Goldsborough refers to the statement that he was refused all pay and emoluments for this period of time, (from June 18, 1812, to July 1, 1816.) That

is true, as shown by the decision at the Fourth Auditor's office, and it is also true that, in refusing to pay him for unrendered services, the law officers of the Treasury simply decided his case in accordance with the letter and spirit of the terms of his warrant, the warrant and appointment of all others similarly conditioned, and the unexceptional and universal usage in such cases, since the organization of the Navy Department. I might cite the cases Bailey, Lee, and, indeed, of every officer in the Navy; for it rarely happens that an officer receives orders with his appointment, and even then, his pay only commences when he leaves his domicile, to report in obedience to those orders. But Rear Admiral Goldsborough never made any claim for this four years' pay as a midshipman until within a few years—before the present retiring laws had been enacted, and when, probably, he felt that, whether or not entitled, under the law, to the pay, no great harm could come to him if he failed in his attempt. It is evident, however, that when he gave a written power of attorney to a claim agent, to prosecute his claim at the Treasury, he was not haunted by the nightmare of the retired list, which has on it the distinguished names of the illustrious Stewart, Rear Admirals Smith, Shubrick, Stringham, Bell, and many others who have brought quite as much fame to the country and service as the distinguished Rear Admiral, who now only sees it "under one cover, an Asylum and a Botany bay."

He, ignoring his responsibility for the arguments used by his attorney, says he "had never read a line of the agent's letters;" but I am quite sure no one knows better than Rear Admiral Goldsborough that, when he gave his written power of attorney, it was to prosecute a claim for constructive and not for actual service; and he need scarcely be reminded of the maxim in law, that what one does by his agent he does by himself, and is responsible for in law.

There is still another point in the sixth count made by Rear Admiral Goldsborough, that he was refused an examination for a lieutenancy because he had not attained the age of eighteen years, prescribed at the time, and on the ground that the mere date of his warrant counted as nothing in the matter. Now, the

facts appear to be a little different. The usage of the Department has been, without exception, it is believed, to order all midshipmen and other officers home as soon as they are entitled to examination. In some cases, it is believed, midshipmen and others have preferred, for their own personal reasons and convenience, to be absent at an examination, when they were entitled to appear. Whether such was the case or not with Rear Admiral Goldsborough I have no means of knowing, (and it will be remembered he was *then acting lieutenant;*) but I do know, and the Navy Registers will show, that many midshipmen were debarred examination in consequence of not having reached the prescribed age. It appears that some of these midshipmen, whose warrants and appointments bear date in 1809, 1812, and 1813, were examined in 1820. Others, of 1813, 1814, and 1815, and two of 1810, were examined in 1822; but their positions were not assigned to them in the Navy Registers until their relative qualifications had been finally determined upon, after the examinations of all of each of those years.

The name of Midshipman L. M. Goldsborough appears on all the printed Navy Registers from 1814 to 1824, inclusive, and in that of 1815 as stationed at Washington. In the Register of 1824 his name appears as attached to the Franklin 74 P. O., with the date of warrant 18th of June, 1812. On this same register will be found the names of two midshipmen, one of 1805, one of 1809, two whose dates of warrant are in 1811, twelve of 1812, (the date of Rear Admiral Goldsborough's,) in addition to himself, and therefore it does not appear that his case was so very peculiar, or of very great hardship or wrong.

He states that, in consequence of the refusal to allow him an examination because he was not old enough—the case of many others—and being kept at sea, he was not allowed an examination until early in January, 1825. Now, it is only necessary to look at the Navy register of 1825, and it will be seen that in 1821 there were four lieutenants made, in 1822 two were made, and in 1825 sixty-eight, whose commissions bore date January 13, 1825, including Rear Admiral Goldsborough himself.

Daniel H. McKay, whose warrant bore date 16th April, 1813,

stood at the head of this list of promotions, where it was placed by the board of examiners; the name of John L. Saunders, whose warrant bore date November 15, 1809; the name of David G. Farragut, whose warrant bore date December 17, 1810; of Stephen B. Wilson, whose warrant bore date January 1, 1812; Thomas Pettigrew, whose warrant bore date January 1, 1812; John L. Chauncey, the same; two of 1810; two of 1811; and also that of Duncan N. Ingraham, whose date of warrant is the 18th of June, 1812, (possibly another pet of Mr. Paul Hamilton,) —the same date that Rear Admiral Goldsborough's bears, and as that of the declaration of war—all appearing as they were arranged by the board of examiners, including that of Rear Admiral Goldsborough.

It is thus seen that in the list of midshipmen passed for promotion in 1822, Duncan N. Ingraham, who was appointed on the same day as Rear Admiral Goldsborough (viz, June 18, 1812,) was placed at the head of those of his examination who passed that board, and Rear Admiral Goldsborough was promoted on January 13, 1825, with sixty-seven others, including Ingraham, and others, *above whom he was placed.* What ground of complaint can or could Rear Admiral Goldsborough then have on the score of disadvantage growing out of his being "a mere child," when he was promoted to a lieutenancy on the same day that others were promoted, who entered in 1809, 1810, 1811, and 1812, before the date of his warrant, which he now wishes to ignore? He was not only made a lieutenant with midshipmen who had entered the service years before him, but it is fair to believe that few of them were so fortunate as he, in being an acting lieutenant for nearly two years.

An examination of the Navy Register shows that one of the midshipmen who was promoted to a lieutenancy on January 13, 1825, (with Rear Admiral Goldsborough,) was fifteen years and two months in that grade; three, including Admiral Farragut, were fourteen years and one month in that grade; two were thirteen years and eleven months; three, thirteen years and one month; and Rear Admiral Goldsborough, with others of his own

date, June 18, 1812,) were only twelve years and seven months in that grade.

Where, then, is the injustice to Rear Admiral Goldsborough? Farragut and others, his peers in every way, who met the enemy during the war with Great Britain, served, as has been shown, a year and a half longer in the grade of midshipman than he did.

Rear Admiral Goldsborough states that all who had been examined previously to himself, (except a few who had failed once of success,) and who were advanced at the same time, were placed over him, although he had the good fortune, he says, to pass at the head of the few who were examined with him. The Rear Admiral seems to be in this assertion quite as far wrong as in his other positions.

Now, on the thirteenth page of the Navy Register for 1824, the name of Duncan N. Ingraham, who was appointed, as we have seen, on the 18th June, 1812, stands at the head of the list of twenty-two midshipmen passed for promotion in 1822. All of the midshipmen who had passed for promotion, including, it is believed, three who were examined with Rear Admiral Goldsborough, were made lieutenants on January 13, 1825; and he says himself he was not examined until early in January, 1825; and we find in the next Register the name of Ingraham and others under his, as lieutenants who passed in 1822, three years before him.

L. M. Goldsborough stands fourteen from the foot of the list of lieutenants in the Register of 1825. The simple fact that Rear Admiral Goldsborough was placed, when he passed in January, 1825, *above Ingraham and others who had passed in* 1822, is *prima facie* evidence that no injustice was done him.

The positions, taken in the seventh, eighth, and ninth parts of Rear Admiral Goldsborough's letter of July 3, 1866, will be fully answered in the paper which I now propose to read to the committee; and although I neither claim to be, nor have pretensions to the requisites which constitute a lawyer, in the technical and professional sense, I may be permitted to say, that this paper will stand the test of criticism of the ablest jurists in the land.

There are, however, some other points in the remaining sections of that letter which will require a passing remark.

The navy law of December 21, 1861, provides that whenever any officer of the navy "shall have been borne on the Navy Register forty-five years, or shall be of the age of sixty-two years, he shall be retired from active service, and his name entered on the retired list."

Among the officers retired by the operation of this law, *proprio vigore*, was Captain L. M. Goldsborough: but this officer, having subsequently received the thanks of Congress, and been restored to the active list, became entitled to the benefit of the eighth section of the law of July 16, 1862, which provides that an officer who has received a vote of thanks of Congress "shall not be retired, except for cause, until he has been fifty-five years in the naval service of the United States."

It is contended on the part of Rear Admiral (late Captain) Goldsborough, that he is not yet subject to retirement under the last-cited law, because fifty-five years have not elapsed *since he received his first order for duty.*

But this is an attempt to set aside the universally-received meaning of the term "service." The length of an officer's service has invariably been computed from the date of his appointment, and that of an enlisted man from the date of his enlistment, without reference to the time during which he has been employed on active duty. An officer or man waiting orders, on furlough, or leave of absence, or on the sick list, is as much in the service as if he were actually doing duty on board ship.

It can have been recently only, that Admiral Goldsborough has persuaded himself of the incorrectness of the meaning of the term "service." While a midshipman, he received an appointment as acting lieutenant, on the ground that he was entitled to it by the length of his service, computing his service from the date of his appointment, though another midshipman, doing duty on board the same ship, had been employed longer on actual duty than himself by more than two years.

Some years since, he attempted to recover pay for the time intervening between the date of his appointment and that of his first order. He now intimates that he was not aware, at the time, of the arguments used by his attorney to enforce this claim; had

"never read a line of the agent's letters;" but he gave his attorney a written power, and he knew there was but one conceivable ground on which the claim could be based—that of constructive, not actual, service. The claim was rejected, not on the ground that he had not been in the service, but because he was appointed with the express understanding that he was not to be allowed pay until he entered on duty, the same as all other midshipmen at that time.

To suit his purpose *then*, he claimed that he *was* in the service from the date of his warrant as a midshipman. To suit his purpose *now*, he claims that he was not in the service until he received his first order; and in support of this claim he exhibits an argument constructed by his personal friend and guest, on board his flag-ship, Mr. Kennedy, formerly Secretary of the Navy. Of Mr. Kennedy's argument, he says: "The Department, it will be perceived, is as silent as the grave in regard to his reasoning, and the cause of its reticence is obvious. It is undoubtedly too conclusive to be assailed by the logic of the Department, or that of any other quarter."

It is within the limits of possibility that it was not the *strength* of Mr. Kennedy's argument that caused the Department to pay no attention to it. But that Mr. Kennedy himself apologizes for it, "as a rapid composition of rough notes," it might be considered a somewhat remarkable argument to have emanated from a gentleman of the legal profession. For instance, Mr. Kennedy contends against giving that construction to a statute which the plain import of its language requires, because "absurd" consequences might possibly follow from such a construction, and to illustrate this *reductio ad absurdum*, he supposes a most improbable case. This sort of reasoning would overturn the most skillfully-devised statute that was ever framed. There is probably no law in existence that, under some possible combination of circumstances, would not result in absurd consequences. The occasionally absurd consequences of the best laws is a subject of common remark; and if every man were at liberty to disregard a law which he deemed absurd, there would be no law left. If the meaning of a law be clear, the lawgiver must be

responsible for the consequences, for he only can alter the law. The meaning of the term service is clear and undeniable; if adhering to that meaning in carrying the law into execution leads to the absurdity, the crime, or the folly of retiring such a man as Admiral Goldsborough, Congress is responsible.

Another sample of Mr. Kennedy's unassailable reasoning is to be found in his assertion, thrice repeated, dwelt upon as highly important, that under the eighth section of the act of July 16, 1862, even after fifty-five years' service, according to his own construction of the term service, Admiral Goldsborough may continue on the active list as long as the President chooses to keep him there. In other words, the law of December 21, 1861, under which officers of the navy generally are subject to retirement, is, with respect to Admiral Goldsborough, not merely suspended, but repealed. Surely it is excusable to be dumbfounded by such an assertion.

Mr. Kennedy's eloquent appeal for his friend has little semblance of a legal argument, except so far as it considers the retiring laws as laws *in pari materia*, and attempts thus to give a construction to the law of July 16, 1862.

There is no doubt that laws *in pari materia* must be construed with reference to each other; but this becomes necessary and proper only when a question of construction or a doubt as to the meaning of the law arises. If the terms of a law are clear, the law must be executed according to the plain meaning of its language, unless a law *in pari materia* of subsequent date renders it impracticable to execute both laws. Where no doubt exists as to the meaning of a law, to attempt to construe it by reference to laws *in pari materia*, merely for the purpose of producing a fancied harmony, to remove an apparent inconsistency, or prevent a possible absurdity, is wholly inadmissible by any law or rule of construction.

Now, there is no doubt as to the meaning of the words "service," in the law of 1862, and to attempt to give a new meaning to that word now, is no more legitimate than the attempt to substitute other words for the words "fifty-five years." The true object of the attempt, in fact, is to alter the meaning of these

last words, under the pretense of correcting the meaning of the term "service."

No more conclusive and significant proof can be adduced of the correctness of the interpretation given by the Department and service generally, to the eighth section of the act of 1862, than the labored letter of July 3, 1866, by which Admiral Goldsborough himself initiated a discussion as to the construction of the law. If his claim was so clear, as he now pretends to think it, why should he, a year in advance, make such earnest and eager preparations to defend what nobody had then attacked? If the law was so clearly in his favor, why was he so apprehensive that the law would be misunderstood?

Why should he be the first to raise the dust of controversy, except in the expectation of blinding the eyes of others?

How is it that since the establishment of the Army and Navy this question as to the meaning of the terms "*in the service*" has never been raised until now? At this moment, if any officer of either branch of the service should be asked how long he had been "in the service," his answer, unless he were a convert to the new doctrine of Admiral Goldsborough, would refer to the date of his appointment, commission, or warrant, and not to the date of his first orders. He would reply, "I was appointed on such a date," and not "My first order was dated so and so."

If the possible absurdity of a law can be conclusive argument against its validity, let us consider the absurdity which might result from Admiral Goldsborough's construction of the law in question. An officer might, like Admiral Farragut, have received his first order while yet a child, and in consequence have participated in one of the most sanguinary naval battles on record. In consequence of this early order, dating his actual service so much further back, he should now, according to Admiral Goldsborough's view of matters, be punished and dishonored, by having so much the less time to serve on the active list; but another, whose precious childhood, like Admiral Goldsborough's, was shielded from the possible consequences of an order until the war was over, is now to be rewarded and honored for his inaction, by having his time on the active list extended.

and the indulgence then shown him is made the ground of a demand for further indulgence now. Can there be greater absurdity and injustice than this? Yet such is precisely the position of Rear Admiral Goldsborough. He claims the consideration and indulgence of his country on the very ground that he rendered it no actual service. Surely it would be more consonant with reason and equity if Rear Admiral Goldsborough, having heretofore enjoyed all the advantages of being "a favorite" with Mr. Paul Hamilton, should now be content to experience some of its disadvantages, and not vociferously demand to be also "the favorite" of the nation, and the pet of Congress.

The Rear Admiral says: "Even extending to me what I really think is clearly right, viz, that my entry into the service shall date from 1816, the period of my remaining on the active list will then be prolonged but four years beyond that deduced above in the supposition that no thanks of Congress had been bestowed, or from 1867 to 1871." Now, we think that it has been shown conclusively, that he was, by the rule applied to every other officer in like circumstances, in the service from June 18, 1812, and therefore this, the only claim he then set up, is proved to be entirely untenable. But it would seem that the Rear Admiral, having changed the venue to the committee-room and halls of Congress, has changed his pleadings also. If the learned counsel was correctly understood, he gave some ominous hints about the Rear Admiral's not being retired before 1877, and not then, unless the President should see fit to order his retirement. I confess, that, in my judgment, the one claim is quite as resonable as the other. If the laws of the Navy and the usage of the Department are to be wholly disregarded, so as to keep one particular officer four years longer than he is entitled to on the active list, why not let him be there for life?

In the ninth section of the letter, he says—and it will be remembered, that at the date it was written not a whisper had been uttered by the Department in regard to his retirement—"all, I suppose, I can hope for, from the action of the Department itself, is the determination that 1816 shall be regarded as the initial period of my naval service; for I am well aware of

the restraints and obligations of law." He also asks the Department, if judged necessary and proper or expedient, to move for legislation in his behalf. He reminds the Department, however, of the great difficulty in framing general acts of grace.

Now, I would repectfully ask, could anything speak plainer than the Rear Admiral's own language against the claim he has set up. He knows, as every other officer in the navy knows, that the design of the law was to make, and the law does make, fifty-five years the final moment for retiring all officers below the rank of vice admiral who have received votes of thanks, and he also knows that the rule of counting service from the date of warrant or appointment was and is universal, and has never been departed from. As to acts of grace, that is a matter for Congress in its wisdom to consider. When the country finds and needs the services in the highest grade of another Farragut, the Navy will be glad to see acts of grace conferred upon him; but, when acts of grace are to be conferred, it is hoped neither the law will be violated, nor injustice done to a whole corps of officers, who have rendered the State some service.

Rear Admiral Goldsborough asserts that it is easy to discover that the peculiar circumstances attending his case impart to it an exceptional character, and that the root of all is, that he went on board ship unusually early in life—between eleven and twelve years of age; and says he is not aware that on that account he should be held to undergo official deprivation. I fail to discover the peculiar circumstances attending his case, as he wishes them understood. Saunders, Farragut, Barron, Gadsden, Sinclair, and others, even down to a period little anterior to the establishment of the Naval School, were appointed midshipmen when they were mere children. Farragut was born in 1801 and appointed in 1810. Rear Admiral Goldsborough says he was born February 18, 1806, and was appointed June 18, 1812. It is well known that Saunders and Barron were younger than either of these when they were made midshipmen. The regulations of the Department prohibited them from being examined for promotion until they reached a certain prescribed age; but it applied equally to all. Farragut's commission as a lieutenant

bears the same date that Rear Admiral Goldsborough's does, although the former had his warrant and acted afloat under it nearly two years before Rear Admiral Goldsborough received his warrant, and six years before the time Rear Admiral Goldsborough now claims he *actually* or *really* entered the service.

I beg to ask again, where is the wrong charged to have been inflicted upon Rear Admiral Goldsborough? Possibly he is of the opinion that as his and Admiral Farragut's commissions as lieutenants bear the same date, the same honors should be conferred upon him, as an act of grace, that a grateful nation has, through its legislators, conferred upon Admiral Farragut for services rendered to the State, unsurpassed in brilliancy in the annals of any nation.

If it be the pleasure of Congress to confer this or any other act of grace upon the Rear Admiral, I am quite sure this committee will not find naval officers interposing objections, so long as the rights of others are not invaded by a violation or evasion of the laws recommended and passed by that body.

This now famous letter of July 3, 1866, is closed as follows. The Rear Admiral says: "I beg to avow that I present this communication to the Department with every confidence in its disposition to award what is right to each and all under its control."

It will, however, be readily seen from the further letters and the "notes," printed and privately circulated in regard to this case, that the Rear Admiral's ideas of right are very much after the order of those of the famous impartial judge in the fable. The Department would no doubt have retained the confidence of Rear Admiral Goldsborough, as to its disposition to award what is right to each and all under its control, had it ignored the law, all precedents, and the immemorial usage of the service, and allow him to remain, *as of right*, on the active list, to an indefinite period of time, or to the end of his natural life.

Rear Admiral Goldsborough refers, in a short letter to the Department, dated October 14, 1866, to the fact that he was retired under the forty-five-year-service law, but that he was restored under another clause in the same act. It may be enough

to say, that he was not officially informed that he had been retired, for the simple and only reason, that in the pressure of business at the Department his name and the length of his service were entirely overlooked, until after the joint resolution of thanks had been recommended and passed. That subject was, however, merely alluded to incidentally in one of the communications from the Secretary, although the counsel dwelt upon it somewhat longer than there seemed to be any necessity for.

Rear Admiral Goldsborough, in his communication dated October 27, 1866, to the Department, says he was aware of the words "*leave on the Navy Register*," contained in the act of December 21, 1861, but that he supposed they were intended to apply to substantive, and not to fictitious cases. It is very difficult to conceive what there can be fictitious in the warrant of Midshipman Goldsborough, that was not so in Saunders's, Farragut's, Barron's Godon's, and others. It has already been shown that Saunders and Farragut, who received warrants long before Midshipman Goldsborough, were made lieutenants on the same day that he was; while Barron, whose warrant bore date January 1, 1812, (before that of Goldsborough,) was not made a lieutenant until March 3, 1827, more than two years after Rear Admiral Goldsborough received his commission in that grade.

Rear Admiral Godon entered the service March 4, 1819, passed his examination for promotion June 4, 1831, and was promoted to a lieutenant December, 1836, nearly eighteen years after the date of his warrant; while Rear-Admiral Goldsborough was only twelve years seven months in the service before he was commissioned a lieutenant, nearly two of which years, he acted as a lieutenant in virtue of the seniority of the date of his warrant.

Having already shown, as I think, conclusively, that the statements and arguments of Rear Admiral Goldsborough, through his various phases of a favorite child of Mr. Secretary Hamilton, of his having gone on board ship uncommonly early in life, and the refusal of an examination, on account of age, &c., have no real value or bearing in this case, as maintained by him, it would seem to be a waste of time, if not a tax upon the patience of the committee, to follow him through his letter of October

27, 1866, where he still harps upon "while yet a mere child," &c., &c. He says, "'borne on the Naval Register' is a popular phrase." So is "in the service" a popular phrase, if you please to so consider it. But, if Midshipman Goldsborough was not in the service, as was Sanuders, Farragut, Bailey, and others who entered when very young, how did it happen that the Secretary of the Navy could, and did, give him an order dated July 1, 1816? If he was not in the Navy on July 1, 1816, by virtue of an appointment of some date prior, he could not have been ordered, on that day, for duty as a midshipman: and if he had not been considered in the service prior to that time, it would have been necessary to give him a warrant or appointment showing the date the Department considered that his service should commence; but it has already been shown that he was, in every sense, in the service, as well as being borne on the Naval Registers, and that he received a positive benefit, for nearly two years, in rank and pay, besides the incidental benefits of seniority among midshipmen when on duty together, owing to his seniority of date of warrant over Adams and others on board the Franklin.

Rear Admiral Goldsborough makes a point, and claims a broad difference between his case and that of Rear Admiral Stringham. The difference is simply this: Rear Admiral Goldsborough should have been formally retired by notice from the Department, and doubtless would have been, had his case not been overlooked until after the passage of the resolution of thanks, &c.; while Rear Admiral Stringham had been formally retired by the Department, under the same law, before he received his vote of thanks.

Rear Admiral Goldsborough maintains that he was not in the naval service, as contemplated by the law, from the date of his warrant, June 18, 1812, although admitting that his name has been borne on the Naval Registers from that time. No better argument can be made than that contained in the printed document under the heading, "Case of Rear Admiral Goldsborough," pages 14 and 15, which, with the permission of the committee, I will read.

"*Case of Rear Admiral Goldsborough.*

"In computing the length of service of an officer in the Navy, the time during which he may have been off duty and receiving no pay has never been excluded. An officer suspended by sentence of a court martial from rank, duty, pay, and emoluments, is considered, notwithstanding such suspension, as still in the service. No new appointment is required to restore him to it.

"The test of being in the service is being subject to an order. 'Those serve who stand and wait'—who are agreed to become subject to orders.

"It is claimed that Midshipman Goldsborough was not in the service until he received his first orders. But if he was not in the service, what right had the Department to give him an order? And how could he be considered as not in the service when, at any time after the date of his appointment, he was subject to an order, and might have been punished for disobeying it?

"It is said that his appointment was not in fact an appointment, but merely a promise of one. But he ever receive any other appointment as midshipman? And could he at any time after receiving that appointment have admitted that he was not a midshipman, but merely had the promise of an appointment? If that appointment did not make him a midshipman, he never has been a midshipman, nor entitled to rank and pay as such.

"Upon the ground of this appointment he claimed arrears of pay as midshipman, in violation of the condition upon which he received the appointment, insisting on the pay because he had been undeniably in the service.

"That claim was rejected—properly, I have no doubt—not because he was not in the service during the time for which he claimed pay, but because the pay of a midshipman at the date of his appointment, and for many years previously and subsequently, was fixed, not by law but by the President. The President, therefore, or the Secretary of the Navy acting in his name, had a perfect right in any case to fix the terms upon which a midshipman should receive pay, and the rate of pay; he did fix the term in Midshipman Goldsborough's case. Had the pay been fixed by act of Congress, the President could not have given an appointment and yet have deprived the person appointed of his claim, under the law, to pay.

"As to the acts of Congress which are cited as pari materia, and which it is said should be liberally construed, no proper construction of them can sustain the claim of Rear Admiral Goldsborough. It is the term 'service' in these acts, or one of

them, which shuts out the claim. No act of Congress can destroy a fact, though it may give the same benefits as if the fact had not existed. It is perfectly competent for Congress to enact by law that the service of Rear Admiral Goldsborough, or of any other person in the Navy, shall not be *considered* as having commenced until he was sixteen years of age. This, however, will not destroy the fact that, according to uniform usage in construing the term, his service *did* commence before he was sixteen years of age; but it would give him the same right to the *benefit* of the retiring laws as if the fact had not existed.

"But Congress has as yet enacted no such law. In the mean time, who can doubt that if adhering to the uniform construction given by usage to the term '*service*' would give Rear Admiral Goldsborough a claim to increased pay and rank, instead of exposing him to be retired sooner than is agreeable to him, he would strenuously contend for adherence to the usual construction, and scoff at the arguments now used to show that he was not in the service until July, 1816?"

It has been seen that Rear Admiral Goldsborough has been disposed, since the question of his retirement has been discussed, to ignore the statements and arguments of his attorney in the prosecution of the claim for pay as midshipman from 1812 to 1816. I think the letter of the Rear Admiral, dated May 29, 1858, addressed to his attorney, which will be found on page 25 of the Pub. Doc., will convince this committee that, at that time, he had no doubt in his mind that he was actually and really in the service from June 18, 1812; and, as to the alleged circular addressed to "young men," about pay, &c., about which the attorney inquires, no such thing had ever been heard of, before or since; and no one, it is believed, has ever asserted that there was or was not such a circular. The faces of the warrants or appointments showed that there would be no pay until ordered to duty.

The learned counsel for the Rear Admiral referred, during his argument on Tuesday last, to a pamphlet entitled "Notes in Relation to the Case of Rear Admiral Goldsborough called for," &c., which entitles it to be considered here; besides, the copy in my possession, and the only one I have seen, has some manuscript memoranda in the Rear Admiral's own handwriting, which stamps its authenticity, and I shall therefore treat it as emanat-

ing from the other side in this discussion. I find nothing in this pamphlet that has not already been remarked upon and fully explained, I think, until we reach the third page, wherein the author is painfully anxious as to the construction that may be given by the Department when the name of Rear Admiral Godon comes up for retirement.

In this connection I beg leave to read a part of a letter received yesterday from Rear Admiral Godon:

"NEW YORK, *January* 18, 1868.

"MY DEAR JENKINS: I received your letter yesterday, but was suffering from cold, and sore throat, and could not write. I am no better to-day, and find I cannot venture to leave for Washington. I am sorry for this, as I feel interested in what you tell me about Goldsborough's attempt to retain his position on the active list, in direct opposition to the terms and spirit of the retiring law. Schenck's bill is simply explanatory of the law, as every navy officer understands it. Goldsborough had the *advantage* of *his name* being borne on the Register by, as I understand, receiving promotion to an acting lieutenancy over others in the same ship with himself, *only* because *his* date of appointment in the service was *older* than *theirs*. If this be the case, what stronger argument can be needed to show that Goldsborough *believed himself* in the service from the date of his appointment, although he might not have been allowed the pay until he received a first order? I think it likely that my case is about the same as his in that matter; but I expect to retire at sixty-two, because the law says that I must, and the law says *he must* whose his name has *been* borne on the Register fifty-five years; and why it should be altered for his selfish views, and to the injury of so many worthy naval men, I cannot conceive.

"The Secretary's views, I think, might very well be taken in the matter. He was friendly to Goldsborough, and he certainly is a just man. His decision was exactly that of the entire Navy, so far as I have heard naval officers express themselves; and I think it very hard to all of us that outside influences should have been called in on such a matter. I hope Schenck's bill will pass, for the justice of the thing.

* * * * * * * *

"S. W. GODON."

This financial anxiety will doubtless be fully appreciated by Rear Admiral Godon, as well as by his many friends in the service; and, I think, little will be hazarded by him and his friends

in trusting to the hitherto-acknowledged fair dealing and justice of the Department, notwithstanding the gratuitous and unsustained assertion that "queer notions are entertained thereat (the Department) in construing laws." On the 3d of July, 1866, Rear Admiral Goldsborough avows his confidence in the disposition of the Department to award what is right to each and all under its control. It would seem that Mr. Secretary Toucey's approval of the Fourth Auditor's decision against the claim for pay in 1858 was not such a "queer notion" as to shake his confidence in the Department; but the failure of Mr. Secretary Welles to see through his intensely-interested optics, after receiving so beseeching and complimentary an appeal, has brought him to the conclusion that queer notions are entertained at the Department upon points of law. The law points in these notes, so far as they bear upon Rear Admiral Goldsborough's claim for retention on the active list after June 18, 1867, are fully answered in the paper already read by me.

On the fourth page of the "Notes" it is asserted, in italics, that "It is not true"—referring to the benefits which it is not only claimed, but it has been clearly shown Rear Admiral Goldsborough derived from the original date of his warrant. He appeals to the records of the Department to sustain his assertion. I reply, there could be no better evidence than that contained in Admiral Stewart's letter and the Navy Registers of 1824 and 1825, here present for examination.

Rear Admiral Goldsborough seems to have forgotten that others, now in the Navy, have been midshipmen as well as he, and that they have some knowledge of the value that has always been attached, other things of course being equal, and conceded to date of warrant or appointment.

Rear Admiral Goldsborough does not state the fact that there were no examinations of midshipmen held until about 1820, and that although continued at irregular intervals until 1825, (after which they became annual as a rule,) all the midshipmen, it is believed, who had entered the service up to about 1815, that were in the country at the different times when these examinations were held, were examined in batches, embracing several

dates, (years,) and that the final arrangement of the names in the Register, according to the decisions of these boards, was made to appear in the Register of 1825.

Rear Admiral Goldsborough, on this fourth page of the pamphlet says, that his examination had been delayed until he was twenty years of age—two years longer than was then required; but he has not furnished a tittle of evidence, or even made the assertion, that he made any official application for an examination, nor is it at all probable that he desired to leave the Franklin before the termination of her cruise, especially after receiving his acting lieutenant's appointment. But, suppose he was refused orders to return to the United States for examination: was this an isolated or unusual case? By no means. Under the old system, before the Naval Academy was established, it frequently happened that many midshipmen when at first, a second, and sometimes a third examination was had before they could appear; and it has been shown already that Rear Admiral Goldsborough was placed over midshipmen, when commissioned a lieutenant, who had passed for promotion three years previously, instead of being placed at the bottom of them all, as he states in the notes, page 4.

I regret that it has been necessary to occupy so much of the time of the committee in the discussion of so plain a case. All the difficulties lie in its plainness; for all know how difficult it is to demonstrate by argument an axiom or self-evident proposition.

The counsel of Rear Admiral Goldsborough undertook to inform the committee of the sayings and doings in the Cabinet on the 17th of June, 1867, when this case was taken from the Navy Department to the White House. I have no intention of following his example, although I may be permitted to question the correctness of the statements then made. I fancy that others have had as ample means of ascertaining what Cabinet officers said, and how they voted on that occasion, as the learned counsel himself; but I will content myself with stating that the decision was made in the absence of the important facts since communicated to Congress in connection with the acting lieutenancy.

Now, how stands the case?

1. It is shown that Rear Admiral Goldsborough was sixty-two years of age February 5, 1867.

2. That he had been fifty-five years in the Navy on the 18th June, 1867.

3. That the Department was prevented, on the 17th June, 1867, from issuing the usual order in such cases for Rear Admiral Goldsborough's retirement, he having been fifty-five years in the service, and by his own acknowledgment sixty-two years four months and thirteen days old on the day that he should have been retired.

4. That Rear Admiral Goldsborough has been mistaken in his facts and dates, and that his conclusions, based upon those alleged facts and dates, have consequently been erroneous.

5. That according to a fair construction of the law, as it has been applied in every other case, and has been the universal usage of the Department, Rear Admiral Goldsborough should have been placed on the retired list of Rear Admirals on the 18th of June, 1867.

But Rear Admiral Goldsborough is here, and has been heard by his counsel in opposition to a proposed general law for the Navy, which in its terms is simply affirming the construction of the laws on the subject, which the Navy Department, and, it is believed, every officer in the Navy except Rear Admiral Goldsborough, has hitherto believed, and now believes, to be the true one.

Suppose the proposed law is defeated, and the President should not see fit to review the case with the newly-discovered facts; what will be the consequence?

Rear Admiral Goldsborough will remain at the head of the list of the Rear Admirals, preventing Rear Admiral Davis, who stands next to him, from being promoted to Vice Admiral in the event of a vacancy of Admiral or Vice Admiral; the Commodore at the head of that list will be kept from promotion to the grade of Rear Admiral; the Captain at the head of that list; the Commander, Lieutenant Commander, Lieutenant, Master and Ensign at the head of each list, will be kept out of promotion and pay

so long as Rear Admiral Goldsborough is permitted to remain on the active list.

But this is not all: Under the existing laws, officers are being constantly retired from age and service, which laws Rear Admiral Goldsborough has thus far succeeded in having set aside, so far as he is concerned, and his retention may be the means of retiring a number of officers in grades lower than they would be if he were removed, as he should be, to the retired list. Officers who could reach the grades of Rear Admiral and Commodore on the active list before the period for retirement, if he occupied his proper place on the retired list, will otherwise be retired in lower grades, thus depriving them of rank and pay for the residue of their lives, and their families after their death, of those benefits to which they are justly entitled under the laws.

The officers who are now injuriously affected by the retention of Read Admiral Goldsborough on the active list, have war-records, to a man, *equal*, and many of them *superior*, to Rear Admiral Goldsborough's.

If the present Admiral or Vice Admiral should die while Rear Admiral Goldsborough is allowed to remain at the head of the active list of Rear Admirals, he who, having had the full benefit of his fifty-five years' service, and his sixty-two years and more of age, would be eligible under the existing laws for promotion to the rank of Vice Admiral, which he would retain for life, and might finally become the full Admiral.

In such a contingency, however, it is believed that the entire service would prefer to see those ranks abolished rather than that any officer, so clearly not entitled to either of them, should be allowed to reach them by such illegal and unfair means as have been resorted to in this case.

I may be permitted to say to the honorable committee that, in accepting the invitation to occupy this very novel and ungracious position, I, and others present, have been actuated solely by a sense of duty to the whole Navy, and, so far as I know, the only sentiment that approaches to personal feeling is that of deep regret that a brother officer should have so far forgotten what was due to himself and to the service that has made

him what he is, as to place himself in such antagonism, as he has done, to the whole Navy and the Department, with so bad a case as we contend his is.

It has been intimated that we on this side are personally interested in the decision in this case, and the inference sought to be left in the minds of others is, that Rear Admiral Goldsborough is not in the same sense interested. We, who are here now present, are deeply interested in the decision of this committee, and so are, in a greater or less degree, all the line officers who stand below Rear Admiral Goldsborough on the Navy Register. But I pray this honorable committee to allow me to say, that there is a better and higher argument, and that is, a great principle is involved. If a law is to be set aside for the benefit of a personally-popular officer to-day, why not for the injury of an unpopular one to-morrow? and what use would there be for any law under such rulings?

It has also been hinted that it is not only ungracious, but gratuitous on our part to interpose objections to, or interfere with, the Rear Admiral's movements, &c. Up to the moment that it was discovered by us that Rear Admiral Goldsborough had asked and obtained permission to appear before the committee, I am not aware that any officer on this side had done, or proposed to do, more than to place the official facts as published, in the hands of such of his personal friends as might take an interest in the case. But objections to any open, fair, and gentlemanly course which the officers and friends of the Navy might think pertinent to the occasion, seem to me to come with a rather bad grace from the side that has been moving all the biped elements it could control, male and female, for more than a year, to block the game upon us,—to checkmate us by playing the whole game themselves—the right hands playing the Rear Admiral's game, while his and their left hands only made such moves as to make their game appear the stronger.

I forbear to go into personalities. I have no wish to open up the secret history of the mole-like and beaver-like work that has been going on in this city, as well as elsewhere, since the receipt at the Navy Department of the well-remembered letter of July

3, 1866, if not before that time. Much of this secret history, if not all of it, is doubtless known and well understood by every gentleman within the sound of my voice; therefore, I will only allude in general terms to that which, although patent to all, need not be dragged forth at the hazard of being thought indelicate or uncharitable to any one.

The honorable member of the House of Representatives who judged it right and proper to present the bill now before this committee to that body, and moved its reference, is no doubt interested in this case, as we all are on this side—first, as a legislator, that the laws be fairly construed and faithfully executed; and, secondly, to remove all doubts in a case in which an erroneous construction of the law has already done serious injury, and will continue, until explained by this act or the reconsideration of the Executive, to do great injury to his gallant brother, Commodore Schenck.

The gist of Rear Admiral Goldsborough's arguments may be summed up in this, that he, having reached his grade and received his vote of thanks late in life, thinks it very hard that he should not be allowed to remain where the younger men—Davis, Rowan, Rodgers, and others—are by law entitled to be; forgetting that he, for years prior to his promotion to his present grade, had been holding high rank, and enjoying all the benefits of high position in the Navy, while these younger men, whom he now envies, were performing the drudgery of the profession in humble rank and with small pay. The whole thing is found in the fact that Rear Admiral Goldsborough is just ten years older than he desires to be at this particular moment. Although the committee may sympathize with him in this unpleasant dilemma, I fear it will not be found a very easy task to arrest the sands of his life, or regenerate him so far as to gratify him to the double benefits he is claiming. These "young gentlemen" will be retired, if the law is not changed, when they reach the age of sixty-two years, or when they shall have served the prescribed forty-five years in the service. Rear Admiral Goldsborough has served that length of time in the Navy, and has had all its benefits, although not quite equal to those of being continued a year

admiral on the active list, with that of vice admiral and admiral in the distance; but he has been already a rear admiral on the active list much longer than many of his equals have been or can hope to be.

Rear Admiral Goldsborough entered the service June 18, 1812, was promoted to his present rank July 16, 1862, and should have been retired June 18, 1867.

Rear Admiral Davis entered the service August 12, 1823, was promoted February 7, 1863, and will be retired, with the benefit of the vote of thanks, August 12, 1878.

The difference between these two is simply that Goldsborough was promoted to a rear admiral and had a vote of thanks when he was fifty-seven years old and had been in the service fifty years; while Davis, when he reached that grade, was fifty-six years of age and had only been in the service forty years. Rear Admiral Goldsborough has had his ten years more than Davis, and now he thinks it hard that Davis should be allowed to remain on the active list while he is not: that is, he has eaten his pie, and, like many persons we have seen, wants to have another allowance, because Davis and others have not had time to eat theirs.

All the officers who received votes of thanks will be retired under the law when they have reached the period of fifty-five years in the service, and those who did not get a vote of thanks will be retired after forty-five years' service, or, by age, before forty-five years, when they reach sixty-two; and, if not by age, then after forty-five years from the time they reached the age of sixteen. That is all that the law requires of Rear Admiral Goldsborough; but he has raised a claim wholly untenable in law, equity, and professional propriety, which, if granted, will violate the law in his case, and give to him what has been refused all other officers.

How are those officers already retired to be reimbursed for pay and rank lost, if his construction is to hold good?

The peroration of the counsel consisted of a few words, which may have been intended to be poetic, pathetic, or deprecatory. I may not have caught them all, or, if I did, it may be that I

failed to comprehend their true import. Something, however, I heard which intimated that it would be better that the Navy (personnel and material, I presume, included) should be sunk into the ocean, than that he should not succeed in preventing the reporting of this proposed bill.

We on this side have no disposition to indulge in poetry or to deal in the pathetic, and much less have we any need for any deprecatory remarks to or before this honorable committee; but we do rely upon, and have implicit faith in, the strength of the position taken against the pretensions of Rear Admiral Goldsborough under the law, as Congress in its wisdom made it, and as it is now for the first time assailed to the serious injury to the service through its length and breadth by a construction that never was intended by the framers to be placed upon it: and we hope that this honorable committee will report the explanatory bill now before it to the House for its action, so that justice may be done to all.

Thanking the honorable chairman and members of the committee for their courtesy, and apologizing for the time I have occupied their attention, I now beg leave to close my remarks in the case.

APPENDIX.

Statement showing the effect which Rear Admiral Goldsborough's retention on the active list, in violation of existing laws and the decision of the Department, has now and will have in the promotion of the officers now in the grade of Commodore on the active list.

If Rear Admiral Goldsborough had been retired, Commodore Lamman would have been promoted June 19, 1867; on account of Rear Admiral Goldsborough's retention, he was not promoted until December 8, 1867.

If Rear Admiral Goldsborough is retained on the active list, Commodore Turner will not be promoted until May 26, 1868; if retired, he would have been promoted December 8, 1867.

If Rear Admiral Goldsborough is retained, Commodore Schenck will be retired as a Commodore. If Rear Admiral Goldsborough is retired, he will be promoted to the grade of Rear Admiral on the 19th September, 1868.

The entire list of Commodores on the active list might in the same manner be gone through, showing similar results.

UNITED STATES NAVY DEPARTMENT,
January 22, 1868.

I certify that the annexed is a true copy from the records of this Department.

(Signed) EDGAR T. WELLES, *Chief Clerk.*

Be it known that Edgar T. Welles, whose name is signed to the above certificate, is now, and was at the time of so signing, chief clerk in the Navy Department, and that full faith and credit are due to all his official attestations as such.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the Navy Department of the United States of America to be affixed, at the city of Washington, this twenty-second day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

[SEAL.]

(Signed) G. WELLES,
Secretary of the Navy.

NAVY DEPARTMENT, *December* 11, 1812.

Herewith you will receive a warrant as a Midshipman in the Navy of the United States, dated June 18, 1812. I enclose a copy of Navy Rules and Regulations, a copy of the uniform, and the requisite oath, which you will take and return to me.

This appointment must be accepted by letter.

You are not to receive any pay or emolument until you report yourself to this Department ready for actual service.

(Signed) P. HAMILTON.

LOUIS M. GOLDSBOROUGH,
City of Washington.

NAVY DEPARTMENT,
WASHINGTON, *January* 22, 1868.

From the official record of letters issued from the Navy Department, as recorded, it does not appear that Paul Hamilton signed such after December 31, 1812, or

that W. Jones signed such before the 24th of January, 1813. During the interim from January 1 to January 23, 1813, C. W. Goldsborough appears to have been acting Secretary of the Navy, or signing "by order of the President."

(Signed) EDGAR T. WELLES, *Chief Clerk.*

BORDENTOWN, NEW JERSEY, *November* 17, 1867.

C. D. DRAKE, Esq.,
17 *Woodland Terrace, Philadelphia.*

SIR: In reply to your letter of the 15th instant, I have to state, that on reference to my order-book I find that I appointed Louis M. Goldsborough an acting lieutenant on board the "Franklin" on the 1st January, 1823, and that on the 27th May of the same year I appointed Henry A. Adams an acting master on board the "Dolphin."

The acting lieutenancy was conferred on Mr. Goldsborough in consequence of the seniority of his warrant, which introduced him into the Navy at the commencement of the war with England, whilst the warrant of Mr. Adams was nearly two years later date.

Very respectfully, yours,

(Signed) CHAS. STEWART.

I certify that the above is a true copy of the original letter of Rear Admiral Charles Stewart, received by me from him on the 18th of November, 1867, and now in my possession.

(Signed) C. D. DRAKE.

Know all men by these presents:

That I, Louis M. Goldsborough, a Captain of the Navy of the United States, do hereby constitute and appoint Alexander H. Mechlin, of the city of Washington, D. C., my true and lawful attorney, for me and in my name and stead to produce, [illegible] Midshipman in the Navy of said States, from 18th day of June, A. D. 1812, (the date of my warrant as such,) to the 1st July, A. D. 1816, the date of my orders to the United States ship "Independence," for which period of time I have never received either the pay or rations (or commutation therefor) then provided for by law for a Midshipman of the Navy, and as such attorney to receive all sum or sums of money that may be due or paid for or on account of said claim, and to give and execute for me and in my name all receipts and acquittances for the same which may be lawfully required.

In witness whereof, I hereunto append my hand and seal, on this 23d day of April, A. D. 1858.

[SEAL.] [illegible]

DISTRICT OF COLUMBIA, }
[illegible] }

Personally appeared before me, a notary public in and for the District and county aforesaid, the above mentioned Louis M Goldsborough, who, before me and in my presence, subscribed the foregoing "warrant of attorney," and acknowledged the same to be his act and deed for the purposes therein expressed.

In testimony whereof, I hereunto append my signature an l official seal, on the date last above mentioned.

[SEAL.]

(Signed) N. CALLAN, *Notary Public.*

A true copy of the original on file in this office.

(Signed) S. J. W. TABOR, *Auditor.*

WASHINGTON CITY, D. C., *January* 23, 1868.

HON. FREDERICK A. PIKE, *Chairman, and the*
Honorable Members of the Naval Committee
of the House of Representatives:

GENTLEMEN: I trust you will pardon me for addressing you further in the case of Rear Admiral Goldsborough. It will doubtless be remembered by the honorable committee that after the close of the remarks which I had the honor to make on last Tuesday morning, the counsel for the Rear Admiral distributed among the honorable members a printed pamphlet, entitled "In the matter of Rear Admiral Goldsborough," &c., &c., signed J. Hubley Ashton, of counsel.

This pamphlet purports by its title to be a "Brief Review of the Statutes Applicable to the Retirement of Naval Officers, and to the matter of Admiral Goldsborough."

It was not, I think, unreasonable for us on this side of the question to suppose that the numerous letters of the Rear Admiral, the "Notes in Relation to the Case of Rear Admiral Goldsborough," privately circulated, and the very long and labored argument of the learned counsel before the Naval Committee on the previous Tuesday, would have afforded, in the absence of any reply from us to either the "notes" or argument, full scope for stating and enforcing the true grounds of the claim set up by the Rear Admiral; but in this we were mistaken, as the exhibition of the pamphlet "In the matter of Rear Admiral Goldsborough" shows.

Conscious as we are of the strength of our position; fortified as we are by the facts, the law, and the justice of our cause, we would be derelict in disregarding the very first lessons of our profession, if we allowed the enemy, seeing the shattered condition of his hull and cut-up spars, to fire the last shot without returning it, harmless as we believe this last one will be in its effects; and I therefore beg the indulgence of the honorable committee to say a few words in reply to this last publication.

Surely no advocate who had any other resource, or who had not an overweening confidence in his power of mystifying others, would have attempted to impose upon an intelligent committee of Congress such fallacies as are contained in this last paper, "In the Matter of Rear Admiral Goldsborough." To note and reply to the whole them, is a task which the committee would hardly expect, or even endure, from any quarter.

It may be permitted, however, to advert briefly to two of the main legal points which would appear to be relied on as unanswerable.

1. A rule by which "the statutes in question are to be construed" is cited from Chancellor Kent.

The rule is indisputably sound. The substance of it is embodied in one of the earliest decisions of the Supreme Court, but in more guarded terms. Judge Marshall says: "It is undoubtedly a well established principle in the exposition of statutes, that every part is to be considered, and the intention of the legislature to be extracted from the whole. It is also true, that whenever great inconveniences will result from a particular construction, that construction is to be avoided, *unless the meaning of the legislature is plain, in which case it must be obeyed.*" United States vs. Fisher *et al.*, (2 Cranch, 358.)

Chancellor Kent says "The object of the rule is to ascertain and carry into effect the intention" of the law.

But where is the authority, if the intention be already ascertained—if "the meaning of the legislation be plain"—for resorting to this rule for the purpose of destroying or modifying such intention and meaning?

The meaning of the legislature is to be gathered from the words which it employs. If they are clear, the meaning of the law is clear.

Who doubted the meaning of the law of July 16, 1862, until Rear Admiral Goldsborough, for his own purposes, attempted to create doubt as to its meaning? Did he doubt the meaning of the words of the law before he addressed to the Department his letter of July 3, 1866? On the contrary, was not his letter

caused by the very fact that there could and would be no doubt, unless he succeeded in raising it?

What officer of the Navy had previously, if he has now, any doubt as to the meaning of the terms "in the naval service?"

Resort is had, therefore, to statutes *in pari materia*, not to explain doubtful words in law, but to get rid of words, the meaning of which is undoubted, thus perverting the rule of Chancellor Kent, and violating the rule of Judge Marshall, that, if the meaning of the legislature be plain, it must be obeyed, though great inconvenience may result.

A question has been well raised, whether, though, an undoubted clerical mistake has been made in engrossing a law, the mistake can be rectified without the action of the legislature, after the law has been duly signed and attested. But who ever claimed, until now, to alter the words of a law, without the assent of the legislature, upon the ground that a reference to statutes *in pari materia* seemed to show that the words were "inadvertently" used, that they led to inconvenience and absurdity, and spoiled "a beautiful and harmonious whole?" If rules of construction give this power, then they give in fact the power of legislation—the power of modifying and repealing laws *ad libitum*.

II. A second specimen of these attempts to mystify those who are supposed to be unable to construe the laws which they enact, is contained in the assertion that, "according to the rule now proposed to be adopted"—that is, if Congress shall declare that the law of July 16, 1862, means what it says—Admiral Godon, supposing him to have received a vote of thanks, "would be retired actually earlier on that very account."

No lawyer who has inspected these retiring laws will assent to the correctness of this statement.

The eighth section of the act of July 16, 1862, does not retire any officer. It is altogether negative in its provisions. It forbids and prevents the retirement of certain officers for a certain period, and does no more. No officer, whether he had received a vote of thanks or not, could be retired by that law: therefore,

no officer could be "retired actually earlier" by that law, on account of having received a vote of thanks.

Admiral Godon, supposing him to have received a vote of thanks, would, in March, 1874, when he shall have been fifty-five years in the naval service, cease to be protected from retirement by the law of July 16, 1862. He would not, however, be then retired. He would still have the benefit of the law of June 25, 1874, and be entitled to remain on the active list until he shall become sixty-two years of age, and have been borne upon the Navy Register for a period of forty-five years, after he had arrived at the age of sixteen years.

The law of July 16, 1862, merely suspends, and does not repeal, the retiring laws with respect to officers who have received a vote of thanks. It suspends the operation of those laws for a stated term, and not indefinitely. Otherwise, why were the words of limitation inserted in the law? The fancied absurdity, therefore, in the case of Admiral Godon, rests altogether upon a misconstruction of the laws.

It is confidently believed that no lawyer will endorse the statements made in that paper as to matters of law. And the statements as to matters of fact exhibit equal temerity.

Reference is made to an unhesitating declaration of "the official head of the American bar," which is said to be "certainly next to a judicial exposition of the statute by the highest federal court."

If these words, which are evidently intended to frighten the committee, refer to an opinion of the Attorney General, it may be permitted to ask, where is the opinion, and when was it delivered? Why not produce it? A "judicial exposition" or judgment of a court carries weight, whether reasons be assigned in support of it or not. Not so with an opinion of the Attorney General, who invariably accompanies his opinion, at least in any debatable cases, with a statement of the reasons upon which it is founded; and no Attorney General, whose opinion deserved any respect, would hesitate to expose his reasoning to public criticism, or claim for it more weight than should be due to its intrinsic strength.

It is known that the Attorney General had an opportunity to render an opinion in the case, but declined to avail himself of it. Would he have so declined, had it been his "unhesitating opinion" that the law was about to be violated by the head of a Department? Would it not have been his duty in such a case to explain to the head of the Department or to the President wherein the misconstruction of the law consisted? Would delicacy require him to permit the law to be outraged, when he might prevent it by a little timely advice? If so, his delicacy might possibly cost the nation more than his services were worth.

The argument of absurdity is again resorted to in this paper. It has been said, in the course of these remarks, that there can be no law, however wisely framed, which, under some possible combination of circumstances, might not result in seemingly absurd consequences. It is impossible for human legislation to provide for all contingencies, or adapt itself to the condition, character, and circumstances of each individual in the community.

For instance, the law taxing incomes exempts incomes of one thousand dollars per annum, or less, from the tax. Suppose an individual, A, affected by the law, were to argue against it, and employ the *reductio ad absurdum* in this way: "My income is one thousand five hundred dollars a year, only five hundred dollars more than my neighbor's; I have a large family to support, and he has none; I have to pay this heavy tax, and he goes out free. This is absurd. The limit of one thousand dollars and under must have been '*inadvertently*' fixed by the law; I will demand relief from Congress." And if Congress should grant relief, B, whose income is only five hundred dollars more than A's, and who has a still larger family to support, present, a similar application.

The retiring laws, like all other laws, must prescribe general rules, which operate unequally on individuals. Under the retiring laws, officers in full vigor of mind and body, and all the more serviceable for their experience, are placed on the retired list. This seems absurd. Yet how could any limit of age or service

be fixed which would not result in this or some equivalent seeming absurdity.

Let that construction be given to the law of 1862 which Rear Admiral Goldsborough insists on, still complaints of absurdity and injustice would follow; and all that has been urged presents no reasonable objection to the bill which the Committee has under consideration.

With these remarks, in answer to the only points in the pamphlet, "In the matter of Rear Admiral Goldsborough," worthy of the least notice, I take leave of the subject.

I have the honor to be, gentlemen, very respectfully, your obedient servant,

THORNTON A. JENKINS,
Commodore United States Navy.